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Attn: Mr. Matthew L. Brooks, Examiner

Ref: Application no. 09/965,338 for Fleming, Et Al.

Unfortunately, the firm of "Simon, Galasso, Frantz, PLC" no longer practices intellectual property law and forwarded this on October 17. Thus, I will attempt to wade into these waters on my own. And, if I have missed the point of your argument I trust you will allow me the opportunity to respond to a specific question. However, the attached is my response to your query.

This is in response to your notice of Office Action Summary requesting a determination between what was perceived to be distinct species:
    1) Maintaining subscriber performance data and facilitating report for TRAINER and,
    2) Maintaining subscriber performance data and facilitating report for TRAINEE.

I will explain in the following pages why I believe the two options are generic and request that it remain included as part of the patent application 09/965,338.

ELECTION
In order to make this argument I first want to elect option #2 as outlined in your notice as all other reports are based on the inputs for Claim 1 based on Trainee. Thus, I elect the option 2) Maintaining subscriber performance data and facilitating report for Trainees.

EXPLANATION OF GENERIC NATURE OF CLAIMS
The TRAINEE component of Claim 1 is the foundation of Claim 30, as the performance of a TRAINER is measured by the progress of the TRAINEE it is not based on separate and distinct data. It is not possible that an objective report could be created for the TRAINER without accessing and manipulating the data described in Claim 1 to Claim 30 to report the performance of Trainees.

The Trainer role is to guide each Trainee through a training program that will enhance ones performance. The result of that training is captured in the data base (Claim 1, etc.). Thus, by including a Trainer reference in the data base one can create a performance report for each Trainer(s) based on the changes in performance of the Trainee(s) assigned. Without the Trainee data, and the ability to capture this data in the process outlined in 09/965,338, the ability to achieve a report measuring a Trainer does not exist. In other words the Trainer's role is to increase the performance of his/her Trainee charges and by analyzing the Trainee data one can

conclude the ability of a Trainer to enhance the performance on one or all of said Trainees over defined periods of time.

Hence claims 30 thru 36 allow that a report based on the Trainee input can also be used to provide an objective report of the Trainers performance for one or more Trainees. Likewise using the same data as indicated in Claim 37, etc. will allow a facility or group of facilities to compare their ability to enhance the performance of Trainees. Thus, the input is generic to a number of reports that can be generated all based on the Trainee input.

Looking at this in another way the goal of each facility or affiliate is to improve the athletic performance of the Trainees or subscribers. Management will engage Trainers for this process and determine the progress toward the enterprise goals by measuring the changes in performance of the Trainees and likewise can determine the performance of the Trainers by the changes in the data acquired for one or more Trainees assigned to a Trainer.

In conclusion, all reports in this system emanate from the data collected on the Trainee as outlined in Claim 1, etc. Thus, the claims are generic save for the specific data assignments in a report format and as such are all components of the "Method, apparatus, and data processor program product capable of enabling management of Athleticism Development Program Data".

If I can be of further assistance please contact me:

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Sincerely

John Fleming
President

2